Robert Novak
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February 8, 2005

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y
★ FEB 08 2005 ★
LONG ISLAND OFFICE

Honorable Judge Denis R. Hurley, U.S.D.J.
United States District Court
Long Island Federal Courthouse
843 federal Plaza

Re: Novak v. Overture Services, et al. No. CV 02 5164

SUR REPLY

Dear Judge Hurley,

I feel compelled to bring to this courts attention the outright mis-statement of facts by Google's attorney Mr. John Slafsky in his letter of February 7, 2005.

He stated that the plaintiff ignored repeated requests to reply to his discovery demands.

After this court decided Google's 12(b) Motion on March 25, 2004 it was the plaintiff that expedited the discovery in a letters to Judge Wall and Google on April 15th, May 10th, May 18th, June 4th, June 15th.

On September 7th, a letter to Google asked again [emphasis added] for a confidentially agreement, again on October 4th, November 2nd and finally on December 6th. All without compliance or request to Judge Orenstein to resolve.

Nothing was ignored relating to discovery on the plaintiff's part, If Google truly believed that was the situation they could have made a motion to compel, and they failed to do so.

Since this letters are not on the record I have attached all exhibits in date order.

Respectfully submitted,

Robert Novak

cc: by mail WSGR
650 Page Mill Rd
Palo Alto, CA 94304

Robert Novak
1550 Sunrise Hwy
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631.789.5400 Fax 631.789.9340

April 15, 2004

Honorable Magistrate Judge William D. Wall, U.S.M.J.
United States District Court
Long Island Federal Courthouse
843 federal Plaza
Central Islip, New York 11722-4449

Re: Novak v. Google Inc, Et Al No. Cv 02- 5164 (DRH-WDW)

Dear Judge Wall,

Pursuant to the Order of Judge Hurley of March 25, 2004 the answers from the defendants are now due.

Accordingly I request a status conference relating to discovery, this may facilitate this case moving forward in an orderly fashion.

Respectfully submitted

S/

Robert Novak, Plaintiff

Attached service list

Robert Novak
1550 Sunrise Hwy | Copiague, New York 11726 | 631.789.5400 Fax
631.789.9340

May 10, 2004

Wilson Sonsini Goodrich & Rosati
By Fax: 650-493-6811

Dear Mr. Slafsky:

As you are aware, on April 15th, I drafted a letter to Judge Wall, copied to all defendants, requesting a Discovery Conference.

Pursuant to our initial telephone call on April 27th, it was my understanding that a draft was to be forwarded by your firm to me on April 30th or May 3rd. However, you delayed in doing so until May 7th when I was out of the office. I reviewed your document today.

Accordingly, we cannot agree on our own to this proposed discovery plan, due to the fact there are four other defendants who must come together for a consolidated discovery plan before any schedule can effectively be presented to the court for approval.

While I realize you are concerned with the discovery plan being filed 14 days beyond our April 27th conversation (I believe that call may have been premature on your part), I believe in the interest of judicial economy. The Court and myself would prefer a joint discovery plan by all parties. None of the other party defendants have been conferenced as of yet pertaining to a discovery plan. I will immediately attempt to contact the other defendants and arrange for a joint conference call as soon as possible.

After such joint conference call, I will prepare a draft discovery plan for all parties.

Thank you,

Robert Novak

Robert Novak
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May 18, 2004

David Kramer

Re: 02-25164 Novak v. Google Inc., et al.

By Fax 650.493.6811

Dear David,

I am confirming the Discovery Conference on for June 8th at 3PM est.

I will supply all initial disclosures in accord with a schedule to be set by and agreed to by all parties.

Also be advised your threats of when I'm to do something will leave you no choice but to take this matter to Court are not well taken.

Further, any further correspondence form your firm should not be faxed.

Thank You

Bob Novak

Robert Novak
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June 4, 2004

Honorable Magistrate Judge William D. Wall, U.S.M.J.
United States District Court
Long Island Federal Courthouse
843 federal Plaza
Central Islip, New York 11722-4449

Re: Novak v. Google Inc, Et Al No. Cv 02- 5164 (DRH-WDW)

Dear Judge Wall,

Plaintiff Robert Novak is responding to the inaccuracies addressed in a letter to your Honor on May 25, 2004 by Google's counsel pertaining to discovery

On April 15, the plaintiff taking the initiative requested the Court schedule a status conference relating to discovery, to facilitate this case moving forward in an orderly fashion.

On April 27, Google's counsel contacted plaintiff and agreed to provide to plaintiff by their counsel a proposed discovery plan by April 30th or the latest May 3rd. Plaintiff received a proposed plan on May 10th, and did not agree with Google's proposal and their demand that plaintiffs initial disclosures were due the next day May 11th.

Plaintiff believes that this defendant was racing to the courthouse steps in advance of the other defendants in this case for no apparent reason.

Plaintiff was already in the process of setting up a joint conference with all of the five other defendants and after numerous telephone calls by plaintiff a date of June 8, 2004 at 3:00PM is now agreed to by all parties.

Although Google agreed to participate they continue on their own schedule, which was never agreed to by plaintiff.

On May 25th Google's counsel claims plaintiff did not respond and claimed that plaintiff said "Google should not expect him to honor court deadlines" for the record that is an outright lie.

Plaintiff fully intends to honor any ruling of the Court.

Rather than waste the resources of this Court with this frivolous request by Google's counsel they should await the Joint telephone conference scheduled on June 8th in a few days.

Further, civility aside, and notwithstanding Google's misstatement of the facts, their approach was unwarranted and is counterproductive in any situation where we are attempting to resolve a matter.

Therefore, plaintiff requests that this Court await the completion of the June 8th conference to address the premature request of defendant Google's counsel.

Respectfully submitted

S/

Robert Novak, Plaintiff

Attached service list

Robert Novak
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June 15, 2004

Honorable Magistrate Judge William D. Wall, U.S.M.J.
United States District Court

Re: Novak v. Google Inc, Et Al No. Cv 02- 5164 (DRH-WDW)

Dear Judge Wall,

I am writing to inform your Honor that, in accordance with my June 4, 2004 letter, (all) the parties that are referenced in the lawsuit above had their 26(f) meeting, via telephone, in accordance with the Federal Rules of Civil procedure, on June 8, 2004. Present during the telephone conference was I, Paul Perlman representing Kanoodle, Margo Metzler representing Overture, Demi Sophocleous and Nick Alexander both representing Biochemics, John Holdefehr, and John Slafsky representing Google.

During the conference, the parties declined to discuss settlement. However, everyone was informed that Kanoodle and Bio-Chemicals have each proposed an offer of settlement, respectively; albeit the terms of each of the settlement offers were not divulged and kept confidential. In addition, by the end of the telephone conference the parties did complete a proposed Discovery Schedule, a copy of which is attached for the Court's review and approval.

Accordingly, I respectfully request that the Court hold a Federal Rule of Civil Procedure 16 Hearing with all the parties present for the purpose of finalizing the Discovery Schedule, resolving the problem that has come up and set forth below, and any other matters this Honorable Court deems necessary.

During the conference, all of the parties including John Slafsky were repeatedly asked if they had any objections or opinion on each of the dates proposed and in the end all agreed to the proposed Discover Schedule. However, now, Google is telling me that Google did not agree to the parties' case management plan of June 8, 2004. (See Mr. Slafsky's June 14, 2004 letter annexed hereto), and that it is their intention to proceed with their previously submitted May 10 Discovery Schedule, which incidentally had not been agreed to by any party to this case.

This presents a real problem. First of all, Google's intentions to use its discovery schedule will break up the case to individual small sub cases with the ultimate result becoming separate appearances and separate trials; a total waste of Judicial resources and likely to lead to disparate results. Furthermore, such schedule is totally prejudicial to me and to the rest of the parties because (a) it was never discussed and approved by all in a Rule 26(f) Meeting; and (b) it will hold the parties to dates that have not been taken into consideration to their schedules and positions in the case.

Finally, because Google's attorneys are holding me to their May 10, 2000 Case Management Plan, they will consider my so-called failure to submit Initial Disclosures in accordance with that plan a default; and more likely than not burden this Court with motions and papers seeking to compel my compliance, again a total waste of your Honor's time

Accordingly, I respectfully reiterate my request that the Court have its Rule 16 hearing as soon as possible.

Incidentally, during such hearing, I respectfully request that the Court also resolve and set my deadline to respond to Google's attorneys First Set of Admissions and Interrogatories which were prematurely served upon me on May 21, 2004 before the parties' Rule 16(f) meeting of June 8,2004, in complete contravention of FRCP 33(a), 36(a) and 26(d).

Otherwise, Google's attorneys will probably waste your Honor's time with even more frivolous motions.

Respectfully submitted,

Robert Novak

Cc:Parties by Fax

HODGSON RUSS LLP
Attorneys for Defendant Innovative Marketing Solutions d/b/a Kanoodle.com
By: Paul Perlman, Esq. Fax 716.849.0349

WILSON, SONSINI, GOODRICH 7 ROSATI
Attorneys for Defendant Google, Inc.
By: David H. Kramer, Esq. Fax. 650-565-5100

BRINKS HOFER GILSON & LIONE
Attorneys for Defendant Overture Services, Inc.
Fax: (312) 321-4299
By: Phillip A. Jones, Esq.,

MORRISON MAHONEY & MILLER LLP
Attorneys for Defendant Biochemics, Inc., d/b/a Doctordog.com
By:Demi Sophocleous, Esq.,Fax. 212-825-1313

JOHN HOLDEFEHR
Defendant *pro se* Fax 1-512-597-2504

Robert Novak
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September 7, 2004

Mr. David Kramer
WSGR
650 Page Mill Rd
Palo Alto, CA 94304

Re: Novak v. Overture Services, et al. No. CV 02 5164

Dear David:

I preparing another amended disclosure as you requested.

In the interim I would remind you that you that as of now you have not sent a confidentially agreement nor have you responded to that issue.

Also in light of the Geico decision I would ask that you re-consider your similar motion in this case.

Bob Novak

Robert Novak
1550 Sunrise Hwy | Copiague, New York 11726 | 631.789.5400 Fax 631.789.9340

October 4, 2004

Mr. David Kramer
WSGR
650 Page Mill Rd
Palo Alto, CA 94304

Re: Novak v. Overture Services, et al. No. CV 02 5164

Dear David:

I am again reminding you of your failure to forward a confidentially agreement. As per my September 7th letter.

Bob Novak

Robert Novak
1550 Sunrise Hwy | Copiague, New York 11726 | 631.789.5400 Fax 631.789.9340

November 2, 2004

Mr. David Kramer
WSGR
650 Page Mill Rd
Palo Alto, CA 94304

Re: Novak v. Overture Services, et al. No. CV 02 5164

Dear David:

Do you intend to prepare a confidentially agreement as agreed or not?

Bob Novak

Robert Novak

1550 Sunrise Hwy | Copiague, New York 11726 | 631.789.5400 Fax 631.789.9340

December 6, 2004

Mr. David Kramer
WSGR
650 Page Mill Rd
Palo Alto, CA 94304

By Fax

Re: Novak v. Overture Services, et al. No. CV 02 5164

Dear David:

I have made several requests relating to a Confidentially Agreement being forwarded to the plaintiff in this matter as it relates to discovery requests by your firm.

To date I have not received same, short of addressing this issue to the Court please comply with this request with the next ten days.

Thank you,

Bob Novak